

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11	GLENN A BRYAN,)	Case No. 08cv0182-IEG (BLM)
)	
12	Plaintiff,)	ORDER CONTINUING MANDATORY
	v.)	SETTLEMENT CONFERENCE
13)	
	HYATT CORPORATION, et al.,)	
14)	
	Defendants.)	
15	_____)	

17 Plaintiff initiated this action in May of 2007 in the United States
18 District Court for the Eastern District of Michigan. The case was
19 transferred to this district on January 29, 2008. See Doc. No. 1. In
20 order to determine the status of the case, this Court held a telephonic
21 case management conference on February 19, 2008. Doc. No. 4. At that
22 time, Plaintiff's counsel represented to the Court that he intended to
23 continue representing Plaintiff, would seek to be admitted *pro hac vice*
24 in this Court, and also was attempting to retain local co-counsel.
25 Plaintiff's counsel has failed to do either of the last two acts.

26 Following the first conference with counsel, the Court set a second
27 case management conference for April 1, 2008. Counsel for both parties
28 failed to appear for that conference. See Doc. No. 9. The Court issued

1 an order setting dates in the case, including ordering counsel to submit
2 confidential settlement briefs to the Court "No later than June 2, 2008"
3 (in anticipation of the June 9, 2008 Mandatory Settlement Conference).
4 Doc. No. 8. Once again, Plaintiff's counsel failed to timely comply
5 with the Court's order.

6 On June 5, 2008, Plaintiff's counsel submitted a request to appear
7 telephonically at the June 9, 2008 Mandatory Settlement Conference. In
8 the request, he also explained that he was "searching for local council
9 (sic)." In response, the Court set a telephonic, attorneys-only case
10 management conference for June 6, 2008, to discuss this request and the
11 status of the case with counsel. During the call, Plaintiff's counsel
12 confirmed that he had not submitted a *pro hac vice* application during
13 the past four months and represented that Plaintiff may hire a
14 California attorney to represent her in this case.

15 In light of the status of the case, the Court finds it appropriate
16 to continue the Mandatory Settlement Conference to September 5, 2008 at
17 9:30 a.m. The conference will be conducted in the chambers of
18 Magistrate Judge Barbara L. Major located at 940 Front Street, Suite
19 5140, San Diego, CA 92101. All discussions at the Mandatory Settlement
20 Conference will be informal, off the record, privileged, and
21 confidential. Counsel for any non-English speaking party is responsible
22 for arranging for the appearance of an interpreter at the conference.

23 a. Personal Appearance of Parties Required: All parties,
24 adjusters for insured defendants, and other representatives of a party
25 having full and complete authority to enter into a binding settlement,
26 as well as the principal attorneys responsible for the litigation, must
27 be present in person and legally and factually prepared to discuss
28 settlement of the case. Counsel appearing without their clients

(whether or not counsel has been given settlement authority) will be cause for immediate imposition of sanctions and may also result in the immediate termination of the conference.

Unless there are extraordinary circumstances, persons required to attend the conference pursuant to this Order shall not be excused from personal attendance. **Requests for excuse from attendance for extraordinary circumstances shall be made in writing at least three (3) court days prior to the conference.** Failure to appear in person at the Mandatory Settlement Conference will be grounds for sanctions.

b. **Full Settlement Authority Required:** In addition to counsel who will try the case, a party or party representative with full settlement authority¹ must be present for the conference. In the case of a corporate entity, an authorized representative of the corporation who is not retained outside counsel must be present and must have discretionary authority to commit the company to pay an amount up to the amount of the Plaintiff's prayer (excluding punitive damages prayers). The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior. Counsel for a government entity may be excused

¹ "Full settlement authority" means that the individuals at the settlement conference must be authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 from this requirement so long as the government attorney who attends the
2 Mandatory Settlement Conference (1) has primary responsibility for
3 handling the case, and (2) may negotiate settlement offers which the
4 attorney is willing to recommend to the government official having
5 ultimate settlement authority.

6 c. **Confidential Settlement Statements Required:** No later than
7 **August 29, 2008**, the parties shall submit directly to Magistrate Judge
8 Major's chambers confidential settlement statements no more than five
9 (5) pages in length. **These confidential statements shall not be filed**
10 **or served on opposing counsel.** Each party's confidential statement must
11 include the following:

12 (i) A brief description of the case, the claims and/or
13 counterclaims asserted, and the applicable defenses or position
14 regarding the asserted claims;

15 (ii) A specific and current demand or offer for settlement
16 addressing all relief or remedies sought. If a specific demand or offer
17 for settlement cannot be made at the time the brief is submitted, then
18 the reasons therefore must be stated along with a statement as to when
19 the party will be in a position to state a demand or make an offer; and

20 (iii) A brief description of any previous settlement
21 negotiations, mediation sessions, or mediation efforts.

22 General statements that a party will "negotiate in good faith" is
23 not a specific demand or offer contemplated by this Order. It is
24 assumed that all parties will negotiate in good faith.

25 ///

26 ///

27 ///

28 ///

1 d. **Requests to Continue a Mandatory Settlement Conference:** Any
2 request to continue the Mandatory Settlement Conference or request for
3 relief from any of the provisions or requirements of this Order must be
4 sought by a **written ex parte application**. The application must (1) be
5 supported by a declaration of counsel setting forth the reasons and
6 justifications for the relief requested, (2) confirm compliance with
7 Civil Local Rule 26.1, and (3) report the position of opposing counsel
8 or any unrepresented parties subject to the Order. **Absent extraordinary**
9 **circumstances, requests for continuances will not be considered unless**
10 **submitted in writing no fewer than seven (7) days prior to the scheduled**
11 **conference.**

12 **If the case is settled in its entirety before the scheduled date of**
13 **the conference, counsel and any unrepresented parties must still appear**
14 **in person, unless a written joint motion confirming the complete**
15 **settlement of the case is submitted no fewer than twenty-four (24) hours**
16 **before the scheduled conference.**

17 Additionally, Plaintiff's counsel is hereby ordered to submit his
18 *pro hac vice* application pursuant to Civil Local Rule 83.3(c)(5) by **June**
19 **20, 2008**. If counsel instead wishes to seek permission to withdraw as
20 counsel or be substituted out as counsel, he must file the appropriate
21 motion on or before **June 20, 2008**. Any such motion must comply with all
22 federal and local rules including, but not limited to, Civil Local Rule
23 83.3(g).

24 The parties are reminded that the dates and times set forth in this
25 Court's April 2, 2008 Case Management Conference Order Regulating
26 Discovery and Other Pretrial Proceedings [Doc. No. 8] will not be
27 modified except upon a showing of good cause, which requires, at a
28 minimum, evidence that the moving party has been reasonably diligent in

1 attempting to comply with the existing schedule. Noyes v. Kelly
2 Services, 488 F.3d 1163, 1174 n.6 (9th Cir. 2007); Coleman v. Quaker
3 Oats Company, 232 F.3d 1271, 1294 (9th Cir. 2000).

4 **IT IS SO ORDERED.**

5 DATED: June 9, 2008

6 

7 BARBARA L. MAJOR
8 United States Magistrate Judge
9

10 COPY TO:

11 HONORABLE IRMA E. GONZALEZ
12 U.S. DISTRICT JUDGE

13 ALL COUNSEL
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28